

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. PAVONE and VALERIE V. PAVONE,

08-cv-2389
(CLB) (LMS)

Plaintiffs,

-against-

**REPLY
AFFIRMATION**

LINDA PUGLISI, individually, ANN
LINDAU, individually, FRANCIS X.
FARRELL, individually, JOHN SLOAN,
Individually, THOMAS WOOD,
Individually and the TOWN OF
CORTLANDT, New York,

Defendants.
-----X

Edmund V. Caplicki, Jr., being an attorney duly admitted to practice law before the United States District Court, Southern District of New York, affirms the following under the penalties of perjury:

1. I am a member of the LAW OFFICES OF EDMUND V. CAPLICKI, JR., P.C., attorneys for the defendants, LINDA PUGLISI, ANN LINDAU, FRANCIS X. FARRELL, JOHN SLOAN, and THOMAS WOOD (hereinafter "Individual Defendants"), and am familiar with the facts and pleadings herein from my review of the file maintained by my office.
2. This Affirmation is submitted in support of the Individual Defendants' motion for summary judgment on the affirmative defense of qualified immunity.
3. Plaintiffs do not contest the motion on its merits and, instead, set forth the argument that the Individual Defendants have failed to comply with the Court's Order and, thereby, should be deemed to have waived their right to move on the grounds of qualified immunity.

4. In doing so, plaintiffs allege that the Individual Defendants did not take their deposition within thirty days after the Court's Order, through no fault of the plaintiffs.

5. Plaintiffs counsel had notice from the Court's Order that the deposition of his clients was required to be conducted within thirty days after the Court conference on May 16, 2008.

6. A notice to conduct depositions on June 16, 2008 was delivered to plaintiffs' counsel, by FAX on June 12, 2008, from the offices of Hodges, Walsh & Slater, LLP, annexed hereto as EXHIBIT A.

7. Said notice, issued pursuant to Fed. R. Civ. P. 30(b), was prepared and signed by the law firm of Hodges Walsh & Slater, LLP at the request, and with full consent, of the Law Offices of Edmund V. Caplicki, Jr. to insure written notification to plaintiffs' counsel that plaintiffs' deposition was to be completed by the thirtieth day following the scheduling conference per Judge Brieant's rules.

8. Plaintiffs' counsel refused to abide by said notice and refused to produce the plaintiffs for deposition as set forth in the notice.

9. Also, notwithstanding an offer to reschedule the deposition to a time more convenient to the plaintiffs (*see* Ex. A), plaintiffs did not seek to reschedule and, instead, simply refused to attend the scheduled deposition.

10. As such, plaintiffs' opposition to the motion for qualified immunity, based upon an alleged failure by the Individual Defendants to take plaintiffs depositions within the prescribed timeframe *through no fault of the plaintiffs*, is without factual basis.

11. The Individual Defendants were denied an opportunity by plaintiffs' counsel to timely depose the plaintiffs, and faced with a further Court imposed deadline to file the motion, the Individual Defendants had no choice but to file their motion based upon available documentary evidence and plaintiffs' own allegations.

12. Since plaintiffs' procedural argument lacks a factual basis and they have not contested the motion on its merits, it is respectfully submitted that the motion must be granted.

WHEREFORE, it is respectfully requested that the Individual Defendants', motion for summary judgment on the affirmative defense of qualified immunity be granted in its entirety and plaintiff's Complaint dismissed with prejudice as against the Individual Defendants, together with such further and other relief as this Court may deem just.

Dated: LaGrangeville, NY
August 6, 2008

LAW OFFICES OF EDMUND V. CAPLICKI, JR., P.C.

By: 

Edmund V. Caplicki, Jr. (6896)
Attorneys for Individual Defendants
P.O. Box 15
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(845) 483-0983
Fax (845) 483-0938

TO: LOVETT & GOULD, LLP
Attorneys for Plaintiffs
222 Bloomingdale Road
White Plains, NY 10605
914-428-8401

HODGES, WALSH & SLATER, LLP
Attorneys for Defendant, TOWN OF CORTLANDT
55 Church Street, Suite 211
White Plains, NY 10601
914-385-6000

EXHIBIT "A"

55 Church Street – Suite 211
White Plains, New York 10601
914-385-6000 Tel.
914-385-6060 Fax.

**Hodges Walsh &
Slater, LLP**

Fax

To: Loretta E. Gould

From: _____

Fax: 914-428-8916

Pages: 3 including Cover page

Phone: _____

Date: _____

Re: Porone vs. Town of Cortlandt cc: _____

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

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• Comments:

attached Please Find Notice to Conduct
Deposition. If you have any Problem
Please Call John Walsh to pick
a convenient time for your client.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROBERT L. PAVONE and
VALERIE V. PAVONE,

Plaintiffs,

08-CV-2389

-against-

**NOTICE TO
CONDUCT DEPOSITION**

LINDA PUGLISI, individually, ANN LINDAU,
individually, FRANCIS X. FARRELL, individually,
JOHN SLOAN, individually, THOMAS WOOD,
individually, and the TOWN OF CORTLAND,
New York,

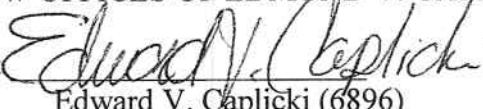
Defendants.
-----X

Pursuant to the Court's Scheduling Order, dated May 16, 2008,
NOTICE
deposition of plaintiffs ROBERT L. PAVONE and VALERIE V. PAVONE,
Monday, JUNE 16, 2008 10 am
The offices of HODGES WALSH & SLATER
55 Church Street, Suite 211
White Plains, NY 10601

Dated: White Plains, New York
June 12, 2008

Yours, etc.,

LAW OFFICES OF EDMUND V. CAPLICKI, JR.

By: 
Edward V. Caplicki (6896)

Attorney for Puglisi, Lindau, Farrell, Sloan & Wood
P.O. Box 15
1133 Route 55, Suite E
Lagrangeville, New York 12540
845.483.0983
FAX 845.483.0938

To:
LOVETT & GOULD, LLP
Attorney for Plaintiffs
222 Bloomingdale Road
White Plains, New York 10605
914.428.8401
FAX 914.428.8916

HODGES WALSH & SLATER, LLP
55 Church Street, Suite 211
White Plains, NY 10601
914-385-6000

TRANSMISSION VERIFICATION REPORT

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FAX : 9143856060
TEL : 9143856000
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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)
) SS.:
COUNTY OF WESTCHESTER)

KIM J. LAMBERTUS, being duly sworn, deposes and says:

I am employed by the law firm of HODGES, WALSH & SLATER, LLP, counsel for Defendant in the above action and I am over the age of 18 years and I am not a party to this action. On August 7, 2008 I served a true copy of the annexed **Reply Affirmation** in the following manner: by Electronic filing and Regular as indicated below:

**TO: Clerk of the United States District Court – Electronic Filing
for the Southern District of New York
300 Quarropas Street
White Plains, NY 10601**

Lovett & Gould, LLP – Electronic Filing & Regular Mail
Attorneys for Plaintiffs
222 Bloomingdale Road
White Plains, NY 10605

LAW OFFICES OF EDMUND V. CAPLICKI, JR., P.C. – Electronic Filing & Regular Mail
Attorneys for Defendants
Puglisi, Lindau, Farrell, Sloan & Wood
P.O. Box 15
Lagrangeville, NY 12540

KIM J. LAMBERTUS

Sworn to before me this
7th day of August, 2008

Notary Public

LAURA J. HEANEY MOLFETANO
NOTARY PUBLIC, State of New York
No. 0086784655

Qualifies for Westminster County
Commission Expires 1/2/2012